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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

THE REALIZATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS

Working Paper presented by Mr. Mustapha Mehedi

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I. INTRODUCTION

1. In its resolution 1997/7 of 22 August 1997, entitled "The realization of the right to education, including education in human rights", the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to place the question of the right to education on its agenda for the duration of the United Nations Decade for Human Rights Education (1995-2004) and requested Mr. Mustapha Mehedi to prepare, without incurring financial obligations, a working paper on this subject, for submission to the Sub-Commission at its fiftieth session.

2. Under the terms of the resolution, the purpose of the working paper was to explain the content of the right to education, taking account, in particular, of its social dimension and the freedoms it includes and of its dual civil and political rights and economic, social and cultural rights character, and to identify ways and means of promoting human rights education.

3. The general outline of this paper is as follows:

1.1 Right to education and education in human rights

4. In its resolution 1997/7, the Sub-Commission encourages the realization of the right to education alongside the promotion of human rights education. While these two subjects could of course be treated separately, it does make sense to combine them, considering that there can be no real respect for the right to education without education in human rights.

1.2 Indivisibility of human rights

5. The right to education is referred to in both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. This simple fact already illustrates the indivisibility of human rights, which is reaffirmed in the Vienna Declaration and Programme of Action in the clearest terms:

> "All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms." (A/CONF.157/24, para. 5).

1.3 Cross-sectoral nature of the right to education

6. The right to education is typically a cross-sectoral right, at the same time civil, political, economic, social and cultural, as demonstrated by Manfred Nowak: 1/

> "The right to education, as it is guaranteed in article 13 of the Covenant on Economic, Social and Cultural Rights, article 28 of the Convention on the Rights of the Child and article 13 of the Protocol of San Salvador, is first of all a 'second generation right'. To be more precise, it is the most outstanding example of the 'cultural rights' category, although some scholars maintain that it is a social right. As a 'second generation right', it is based on the socialist philosophy which holds that human rights can only be guaranteed by positive State action. Consequently, the right to education obliges States to develop and maintain a system of schools and other education institutions in order to provide education to everybody, if possible, free of charge. Like the right to work (the most fundamental economic right) and the right to an adequate standard of living (the most comprehensive social right); the right to education is regarded as one of the basic means needed by a human being to develop his or her personality. [...] Education also falls, however, into the category of the 'first generation of human rights'. Although the classic bills of rights, adopted during the American and French revolutions, do not contain any rights specifically related to education, this changed with the increasing influence of liberalism on the definition of constitutional rights, particularly in Germany. These educational rights clearly defend the liberal and anti-clerical ideas of freedom of science, research, teaching, education and profession against interference by the State and the Church. This liberal concept of education has also been adopted in the international human rights treaties after World War II. Although article 2 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms states that 'no person shall be denied the right to education', the case-law of the European Commission and Court of Human Rights leaves no doubt about the fact that this right does not oblige States to provide education by actively building schools and making instruction available to everybody. It only guarantees equal access to already existing educational

institutions. The main emphasis of this provision is on the State's duty to respect the parents' rights to ensure education and teaching in conformity with their own religious and philosophical convictions. Similar protection of parents' rights from undue State interference can be found in article 12, paragraph 4, of the American Convention on Human Rights, article 18, paragraph 4, of the Covenant on Civil and Political Rights, article 13, paragraph 3, of the Covenant on Economic, Social and Cultural Rights and article 13, paragraph 4, of the Protocol of San Salvador. [...] Finally, education has certain links with the so-called solidarity right of the 'third generation of human rights' ...".

7. It then becomes clear why the right to education should be studied as a cross-sectoral right; it is because it can serve as a model for analysing the content of other economic, social and cultural rights; it also serves to demonstrate the irrelevance of the traditional division between civil and political rights on the one hand and economic, social and cultural rights on the other.

2. PRIORITY QUESTIONS

2.1 Current legislation relating to the right to education

8. It is worth first of all drawing up an inventory of the many international instruments which mention the right to education and analysing them in detail, in order to obtain a more precise idea of the content of this right, which often appears rather blurred. The relevant texts are to be found among the international instruments of the United Nations itself, but also among those of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Labour Organization (ILO) and many regional institutions. In 1995, the World University Service (WUS), the European Forum of Freedom in Education (EFFE) and the International Organization for the Development of Freedom in Education (OIDEL) published a compendium of international texts, which could serve as a basis for this study. It contains 41 texts produced by the United Nations, regional institutions and non-governmental organizations. 2/ A selection is given below of what we feel are the most significant extracts:

The Universal Declaration of Human Rights, in its preamble: "The General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement [...] to the end that every individual

and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for the rights and freedoms and [...] to secure their [...] effective recognition and observance ..."

The Universal Declaration of Human Rights, in article 26: "Everyone has a right to education. [...] Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. [...] Parents have a prior right to choose the kind of education that shall be given to their children."

The International Covenant on Economic, Social and Cultural Rights, in article 13: "... education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. [...] The States Parties [...] undertake to have respect for the liberty of parents [...] to choose for their children schools, other than those established by the public authorities ..."

The International Covenant on Civil and Political Rights, in article 18: "Everyone shall have the right to freedom of thought, conscience and religion. [...] The State Parties [...] undertake to have respect for the liberty of parents [...] to ensure the religious and moral education of their children in conformity with their own convictions."

The Convention on the Rights of the Child, in articles 28 and 29: "States Parties recognize the right of the child to education [...] (They) agree that the education of the child shall be directed to ... the development of the child's personality, talents and mental and physical abilities to their fullest potential [...]"

The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, especially in section I, paragraph 33: "... States are duty-bound [...] to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms"; and in section II, paragraphs 78 to 82, in which the World Conference calls for human rights to be included in the curricula of learning institutions. The Conference "considers human rights education, training and public information essential [...] for fostering mutual understanding, tolerance and peace."

The World Declaration on Education for All: Framework for Action to Meet Basic Learning Needs (adopted at Jomtien, Thailand, on 9 March 1990). 3/

2.2 The basic objectives of education

9. Any thoughts one may entertain about the right to education and its effective realization will depend on one's idea of education and its prime objectives. In an effort to identify a consensus in this respect, Jost Delbrück thinks he may have found one in the link commonly established between the right to education, personality development and the enjoyment of human rights:

> "The focal point and ultimate basis of the right to education as embodied in the various national and international constitutional or other legal instruments is the unequivocal commitment to the dignity inherent in every human being and hence to the development of the human personality. The Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights expressly emphasize this point in the very article dealing with the right to education [...] It can be safely concluded that the human personality inherent in human dignity forms the basis of all aspects and implications of the right to education and as such has to be taken into account in determining the meaning and scope of the right, especially with regard to the role of the State in the process of implementing the right to education." 4/

10. Manfred Nowak, on the other hand, identifies in more detail what he considers to be a consensus on the subject. According to him, there is general agreement that education: (a) allows man freely to develop his personality and dignity; (b) allows his active participation in social life in a spirit of tolerance; (c) respects parents, national values and concern for the environment; (d) contributes to the development of human rights.

11. As far as the practical implementation of objectives is concerned, J. Delbrück notes, however, that the reference to individual freedom is not explicit enough. Referring in particular to article 26 of the Universal Declaration and article 13 of the International Covenant on Economic, Social and Cultural Rights, he finds that:

> "One would be hard put to find any express reference to the value of a broad education with regard to the exercise of individual freedom

as the basis of a socially responsible life in a free society. To be sure, the phrase in article 13 of the International Covenant on Economic, Social and Cultural Rights that 'education shall enable all persons to participate effectively in a free society' comes close to this fundamental aspect of education. But the phrase still seems to have a certain 'instrumental' ring in that it speaks of 'effective' participation in a free society, and it does not refer to the individual as the focal subject, but rather to collectivities like 'all persons' and 'society'. From this perspective, it looks as if the right to education is to be interpreted solely in terms of a social right which corresponds with an obligation of the State to provide for educational opportunities and - in exercising this right - subjects the child to mandatory education (at least at elementary level). But this may not be the final word on the matter. The question to be asked is whether it can be established that the right to education is also linked to the protection of individual freedom, i.e. the classical human rights concept, as it may be seen to be suggested by the reference of the human rights instruments analysed here to the goals of personal development, tolerance and respect for human rights." 5/

12. In the course of his reflection, J. Delbrück also notes that the objective of favouring individual freedom in education is often masked by the growing role required of the State, which can go as far as practically to impose an official vision of the world on pupils who are dependent on the State education system. The negative wording in the First Protocol to the European Convention on Human Rights, namely that "No one shall be denied the right to education", in his view appears closer to the more traditional approach to human rights.

13. With regard to the objectives of education, the Report to UNESCO of the International Commission on Education for the Twenty-first Century proposes some interesting pointers:

"If it is to succeed in its tasks, education must be organized around four fundamental types of learning which, throughout a person's life, will in a way be the pillars of knowledge: *learning to know*, that is acquiring the instruments of understanding; *learning to do*, so as to be able to act creatively on one's environment; *learning to live together*, so as to participate and cooperate with other people in all

human activities; and *learning to be*, an essential progression which proceeds from the previous three. Of course, these four paths of knowledge all form a whole, because there are many points of contact, intersection and exchange among them." 6/

2.3 The duties of the State as regards education

2.3.1 The three obligations of the State and the two dimensions of the right

14. It then emerges clearly that the actual question of the objectives of education is closely tied to the notion of the State's role in educational policy. We might refer at this point to the interesting distinctions drawn by Fons Coomans. Starting from the thoughts of A. Eide on the rights to food, the Limbourg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights and the Maastricht Principles, Coomans attributes to the State a threefold obligation where education is concerned, "to respect", "to protect" and "to fulfil":

> "The first level is the 'obligation to respect'. This obligation prohibits the State itself to act in contravention of recognized rights and freedoms. This means that the State must refrain from interfering with or constraining the exercise of such rights and freedoms. The second level is the 'obligation to protect'. This requires the State to take steps - through legislation or by other means - to prevent and prohibit the violation of individual rights and freedoms by third persons. The third level concerns the 'obligation to fulfil'. This obligation can be characterized as a programme obligation and implies more of a long-term view. In general, this will require a financial input which cannot be accomplished by individuals alone. This typology of obligations is applicable to economic, social and cultural rights as well as to civil and political rights. It demonstrates that the realization of a particular right may require either abstention or intervention on the part of Governments." 7/

15. All three of these types of obligation need to be implemented for each of the two dimensions which Coomans attributes to the right to education, namely the social dimension and the freedom dimension, which roughly speaking correspond to the links referred to above with second and first generation rights respectively:

"On the one hand, realization of the right to education demands an effort on the part of the State to make education available and accessible. It implies positive State obligations. This is the social aspect. On the other hand, there is the personal freedom of individuals to choose between State-organized and private education, which can be translated, for example, in parents' freedom to ensure their children's moral and religious education according to their own beliefs. From this stems the freedom of natural persons or legal entities to establish their own educational institutions. This is the aspect of freedom." 8/

16. All these distinctions illustrate the quite original nature of the right to education, to which Nowak draws attention in the study referred to earlier: "Education is one of the few human rights for which it is universally agreed that the individual has a corresponding duty to exercise this right." An analysis of the effective exercise of the right to freedom of education may be found in the study conducted by the OIDEL under the title Rapport sur l'état de la liberté d'enseignement dans le monde. 9/ Further reference should be made to the work of Audrey R. Chapman, who, in the form of a series of questions to be addressed, introduces criteria for exercising the right to education, which could serve as guidelines for a system of indicators on educational rights. 10/

17. It may be worth pointing out that, apart from the studies referred to above, 11/ most of the works look at the right to education only from the social angle. This shortcoming would appear to be founded on ideological considerations, in the sense that many people believe that stressing the freedom dimension might have the effect of jeopardizing acquired equal opportunity rights, of favouring the affluent or cultured classes and of detracting from social cohesion. On this subject, the article by Herbert Gintis in UNESCO's Prospects review gives an objective presentation of the arguments for and against freedom of education, by comparing education with other sectors of social life, where the rule is competition between different service suppliers, under the watchful eye of the State. 12/

2.3.2. The right to education and academic freedom

18. Most of the studies also omit any reference to academic freedom, which is paid little attention in international instruments, although it is essential to any full consideration of the right to education:

"Although the right to education undoubtedly also applies to university and other types of higher education, there are only very few explicit provisions in present international law protecting academic freedom and university autonomy. The only guarantees in this respect are to be found in article 15, paragraphs 3 and 4, of the International Covenant on Economic, Social and Cultural Rights, according to which States undertake to 'respect the freedom indispensable for scientific research and creative activity' and to encourage international cooperation in the scientific and cultural fields. There are no explicit guarantees of university autonomy, no right of members of the academic community to participate actively in the self-government of institutions of higher education, and no detailed provisions for the protection of academic freedom. The general freedom of thought, opinion, expression, information, assembly and association as enshrined in articles 18, 19, 21 and 22 of the International Covenant on Civil and Political Rights are obviously regarded to be sufficient for the protection of academic freedom." 13/

2.4 The cultural aspect of the right to education

19. Nowak spontaneously classifies the right to education among cultural rights. However natural such a classification might be, it does not shed much light on the subject, since the notion of a cultural right is itself extremely vague and, in fact, little studied. One reference in this respect would be to the acts of the 8th Interdisciplinary Colloquium on Human Rights, organized by the Institute for Human Rights of the University of Fribourg: 14/

"Cultural rights are at present in a state of limbo. They are normally classified among economic and social rights because of a logical link considered by many to be decisive, insofar as they are believed to necessitate State support, in the form of schooling programmes, cultural equipment and easy access to the 'benefits of culture' for the underprivileged. From a legal standpoint, however, they tend not to be studied with social and economic rights, as they are considered to be related by nature to civil and political rights; they constitute a claim on the State to the extent that they signify that the latter cannot interfere with the cultural expression of the individuals and groups that make up the nation." 15/

20. Apart from the simple problem of "classification", clarifying the notion of cultural right entails a complete re-interpretation of the indivisibility of rights. Meyer-Bisch notes seven logical hurdles which are absolutely unavoidable:

"1. The cross-sectoral nature of cultural rights. The three known groups of cultural rights belong to two categories: on one side cultural rights (e.g. to freedom of conscience, opinion, expression, creation and communication) are part of civic rights, while on the other side the right to cultural participation is part of social rights, among which it is undoubtedly the vaguest. The right to education, on the other hand, is usually considered as a mixed right, since although it serves the first group, it falls within the political logic of social rights.

2. According to a utilitarian conception of culture, conceived as a good to be enjoyed, the rights can essentially be classified in the second category, which contains the rights to possession of vital necessities, especially as it appears that the State would be the first supplier. Is it fair, however, to consider culture only as a consumer good? This is the second logical difficulty, which arises from the lack of consensus regarding the notion of culture, resulting in the latter being looked upon either as a personal or collective claim to identity, or as a weapon for reducing the individual to an imposed national identity.

3. The adjective 'cultural' is very often appended to an enumeration (as in the example: linguistic, artistic, scientific and cultural), as if it embodied the vagueness of everything still left undefined.

4. Cultural rights convey the revolutionary character of human rights for the benefit of peoples as well as individuals.

5. It is easy to divert a cultural claim to serve the purposes either of individualism or of uniformity.

6. The fact that the beneficiary of the right is not always sufficiently identifiable (the social dimension of the individual or group) for the right to be respected. Identity can only be claimed starting from a minimum degree of identity.

7. These rights, which are so close to the beneficiary, are at the same time duties, since their purpose, namely culture, is never a free gift; it presupposes participation by the beneficiary, who must deliberately opt for his freedom. This inseparable combination of right and obligation is often used as a pretext for staking a claim while offering nothing in exchange, either in the case of the beneficiary who demands free culture, or in the case of the State, which can take the beneficiary's lack of participation in official culture as an excuse to escape its obligations."

21. Since the right to education is a right to access to culture, it faces the same set of difficulties. 16/

2.5 The economic dimension

22. The economic dimension of the right to education also deserves careful analysis, since clearly without adequate public financing the right cannot be guaranteed. The statistical studies of the Organization for Economic Cooperation and Development (OECD) and the Report to UNESCO of the International Commission on Education for the Twenty-first Century have shown that better management of educational expenditure is not only possible but indispensable. The Report to UNESCO highlights the investment aspect of educational expenditure:

"... spending on education has more than just a social dimension: it is also an economic and political investment yielding long-term benefits. [...] National development hinges on the ability of working populations to handle complex technologies, and to demonstrate inventiveness and adaptability, qualities that depend to a great extent on the level of initial education. Investment in education is thus essential to long-term economic and social development and as such must be safeguarded in time of crisis." 17/

23. Calling for fair public financing of education runs the risk, however, of strengthening the determination of those who militate for State monopoly in education, which is incompatible with the freedom dimension of the right to education. The tendency in the literature on this question is to draw a clear line between the service and its financing. 18/

24. What is the minimum threshold of expenditure on education which may be expected of a State, if the freedom dimension is to be preserved? This is a

core issue which needs to be considered when we analyse the economic impact of the three State "obligations", i.e. to respect, to protect and to fulfil (see para. 14 above).

2.6 A few specific issues

25. Where developing countries are concerned, there is one question which needs priority consideration, and that is the impact of structural adjustment programmes on educational expenditure. UNESCO has completed two studies on the subject: F. Reimers and L. Tiburcio, Education, adjustment and reconstruction, options for change, UNESCO, Paris 1993, and J. Samoff (ed.), Coping with crisis, Casel/UNESCO, 1994. Human rights bodies have discussed this matter at length in recent years and the conclusions reached are far from clear, since there is some doubt as to whether the main responsibility for the crisis lies with the international financial institutions or with governments. It is also worth referring to the reports presented by D. Turk to the Sub-Commission on Economic, Social and Cultural Rights.

26. There are other obstacles to the implementation of the right to education which need to be considered, such as terrorist violence, especially when it attacks cultural actors and institutions. The examples of the Cambodian and Rwandan genocides and the Algerian "intellecticide" spring to mind.

2.7 The right of minorities and the right of indigenous peoples

27. Two of the priorities mentioned by the Sub-Commission have to be tackled by any study on the right to education, namely the rights of ethnic, religious and cultural minorities and the rights of indigenous peoples. On the question of minorities, it is worth referring to the working paper dated 5 May 1997 (E/CN.4/Sub.2/AC.5/1997/WP.3), submitted to the Working Group on minorities by Mr. Guillaume Siemienski entitled: "Education rights of minorities: The Hague recommendations", and the recommendations given in the report of the Seminar on Multicultural and Intercultural Education (E/CN.4/Sub.2/AC.5/1997/WP.5).

> "Members of a minority will also feel a sense of collective cultural security if they enjoy the conditions that are necessary for the community's renewal. Cultural and linguistic renewal inevitably involves the capacity of the community to transmit its culture and language to the next generation. [...] In view of the importance of language, minorities which are deprived by State policy of the

opportunity to transmit their language and culture in a meaningful and dynamic manner will react strongly. One need only look at the ethno-political landscape in a number of States to see the potential for inter-ethnic conflict arising from or around issues of language. This is certainly the experience in Europe." (E/CN.4/Sub.2/AC.5/1997/WP.3, p. 3).

28. On indigenous peoples, UNESCO has published a work entitled: A new partnership: Indigenous peoples and the United Nations system. In the foreword, the Director-General of UNESCO writes:

"No voices have been so systematically excluded from the 'concert of nations' as those of the world's indigenous people. [...] Only recently has their long silence begun to be broken as they have discovered ways of promoting their cause through cross-territorial and cross-regional alliances. The international arena has proved a particularly valuable forum for asserting rights too often denied them at the national level." 19/

In the same foreword, F. Mayor also stresses the dimension of education, when he refers to the UNESCO Associated Schools' Project, which is:

"designed to impart to young people attitudes and ideas conducive to the transition to a global culture of peace, equity and sustainable development".

3. THE ROLE OF HUMAN RIGHTS EDUCATION

29. As mentioned in paragraph 4 above, any general study of the right to education must be closely linked to consideration of human rights education. It is therefore worth trying to identify the role of human rights education within the context of the right to education in general and to show how a real human rights culture can be built up maintaining continuity with specific cultural and religious traditions:

"Although conceptually different, education in human rights and the right to education should not be studied separately, since education in human rights is part of the purpose of education recognized by international instruments [...] A distinction has to be drawn between education in human rights, law, religion and civic ethics, a part of social ethics, which, in turn, should not be separated from ethical training as a whole. This ethic should have as its objective 'the good life with and for others within the framework of just institutions'. 20/

While it should not be separated, it should be differentiated, because education in human rights does not take up the whole area of personal ethics. Human rights education should provide a rational intercultural minimum." 21/

30. There is an urgent need to introduce genuine human rights education, which must be a State responsibility. It should also be universally implemented (the stress being laid on the indivisibility of the rights concerned), especially in school education, which implies reconsidering the objectives of education and culture. This should really be a basis for cooperation rather than a source of conflict.

31. Partnerships and consultations between the different actors (including the United Nations, international organizations, States, NGOs, as well as the media, religious authorities, teachers, school principals, parents, students, corporations, trade unions, specific professional bodies such as lawyers, the police, the armed forces, etc.) are essential to ensure that implementation is effective, that the approach is democratic and that ideas are turned into action.

32. Civic education is a good educational approach to human rights values, since they are interdependent, while International Humanitarian Law should be taught simultaneously. Although these two aspects of law have all too often been dissociated, it should be possible through suitable educational programmes to re-establish the link between them.

33. The fiftieth anniversary of the Universal Declaration of Human Rights also seems to be an excellent opportunity to promote human rights education. Last September, UNESCO held a regional conference which produced some interesting ideas (see final report, Turku, 1997). The Council of Europe's Council for Cultural Cooperation recently published a booklet on "Human Rights Education in School", which describes the current situation in Europe (Council of Europe, 1996). Finally UNESCO has just edited a Manual for Human Rights Education, UNESCO, 1997, directed by K. Savolainen.

4. CONCLUSION

34. In its resolution 52/127 of 12 December 1997, the General Assembly welcomed the decision of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to place the question of the right to education, and in particular human rights education, on its agenda for the duration of the United Nations Decade for Human Rights Education (1995-2004).

35. It is also worth mentioning that, in its resolution 1998/33 of 11 April 1998, entitled "Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights", the Commission on Human Rights decided to appoint a special rapporteur to deal with the right to education within the general framework of economic, social and cultural rights. The Special Rapporteur's mandate consists in particular in reporting on "the progressive realization of the right to education", in promoting "assistance to Governments in working out and adopting urgent plans of action", and in taking into account "gender considerations". The mandate is therefore aimed at adopting emergency policies to remedy grave violations of that right, particularly where women are concerned. Since the Sub-Commission's mandate, as set out in paragraph 3 of its resolution 1997/7, focuses on the content and the scope of the right to education and on promoting human rights education, the two approaches are complementary. In paragraph 6 (a) (vii) of its resolution 1998/33, the Commission explicitly calls for "coordination and complementarity" with the Sub-Commission's working paper.

36. The fact that the Sub-Commission, as an independent body, has been asked to take up the question of the right to education and human rights education is surely of historical significance. This is the first time that the right has been taken into consideration by United Nations bodies dealing with the protection of human rights. The event is all the more noteworthy insofar as it is happening at the time when the international community is celebrating the fiftieth anniversary of the Universal Declaration of Human Rights and in the middle of the United Nations Decade for Human Rights Education. This new awareness, moreover, is a natural follow-up to the Vienna Declaration and Programme of Action.

37. In view of the current tendency to review the whole question of education, we may well expect a more open approach to the right to education, which is all too often considered as a purely technical, pedagogic issue, in contrast to "the developing international awareness of the importance of education, particularly in the field of human rights, for human development" (eighth paragraph of the Sub-Commission's resolution 1997/7).

38. The thoughts set out above are intended merely to serve as a starting point to a broad-ranging debate and to open up some working guidelines for the future, by drawing attention to the importance and the urgency of a more detailed analysis. Such an analysis is worth undertaking. We therefore hope that an appropriate follow-up will be given to the work accomplished so far by the Sub-Commission on the questions dealt with in this document.

Notes

1/ "The Right to Education", in EIDE et al., Economic, Social and Cultural Rights, M. Nijhoff, publishers, 1995, pp. 196, 197 and 198.

2/ A. Fernandez S. Jenkner. Déclarations et conventions internationales sur le droit à l'éducation et à la liberté d'enseignement, Info-3 Verlag, Frankfurt 1995.

3/ Conference organized by the World Bank, UNDP, UNESCO and UNICEF.

4/ Jost Delbrück, The Right to Education as an International Human Right, pp. 98-99.

5/ Ibid., p. 100.

6/ Report to UNESCO of the International Commission on Education for the Twenty-first Century: the treasure within, Edition Odile Jacob, Paris 1996, chap. 4.

7/ Fons Coomans, "Clarifying the Core Elements of the Right to Education", The Right to Complain about Economic, Social and Cultural Rights, Netherlands Institute of Human Rights, SIM No. 18, Utrecht 1995, p. 23.

8/ Ibid., p. 12.

9/ Rapport sur l'état de la liberté d'enseignement dans le monde, Geneva, 1995. Reference in the report should be made in particular to the article by A. Fernandez "La liberté d'enseignement dans les instruments internationaux".

10/ "Monitoring the Right to Education: Reporting to United Nations Treaty Bodies", in Academic Freedom 3, Zed Books, London 1995.

11/ To which we should add the study by J.L. Martinez Lopez-Muñiz, Libertad de enseñanza y derecho a la educación en el Convenio Europeo de Derechos Humanos, OIDEL, Geneva 1993.

12/ "School choice: the issues and the options", Herbert Gintis in Prospects, International Bureau of Education (IBE)/UNESCO Vol. XXVI, No. 4, Geneva.

13/ M. Nowak, op. cit. p. 209. The Sub-Commission's first report on the realization of economic, social and cultural rights already recognized the relevance of a study on academic freedom (cf. E/CN.4/Sub.2/1989/19, p. 22). It is also worth consulting the "Contributions to the preparation of a declaration on academic freedom", adopted by UNESCO in Montreal in 1994.

14/ Patrice Meyer-Bisch, Les droits culturels, une catégorie sous-développée de droits de l'homme, Editions Universitaires, Fribourg, Switzerland 1993.

15/ Ibid., p. 18.

16/ See the Statement on Cultural Rights as Human Rights, Paris, UNESCO 1970, pp. 105-107.

17/ Ibid., chap. 8.

18/ Practical solutions do exist, as it emerges from the records of the Day of studies on the financing of education in Europe, OIDEL, to be published in the first half of 1998. For further reading, it is worth looking up the study by Bruno Mascello, Elternrecht und Privatschulfreiheit, Schweizerisches Institut fur Verwaltungskurse an des Hochschule, St-Gallen, 1995 (in German).

19/ F. Mayor, in J.P. Zinsser, "A new partnership: indigenous peoples and the United Nations system". Educational studies and documents No. 62, UNESCO, 1995, p. 11.

20/ Paul Ricoeur.

21/ Alfred Fernandez, Com-Prendre la Tolérance, pp. 55 et seq., OIDEL/Nicomaque, Geneva 1995.

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